

**275.225 Circumstances preventing distribution -- Determination -- Definition.**

- (1) No distribution shall be made if, after giving effect to the distribution:
  - (a) The limited liability company would not be able to pay its debts as they become due in the usual course of business;
  - (b) The limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution; or
  - (c) The distribution violates the operating agreement.
- (2) The determination that a distribution is not prohibited under subsection (1) of this section may be based upon:
  - (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
  - (b) A fair valuation or other method that is reasonable under the circumstances.
- (3) Except as provided in subsection (5) of this section, the effect of a distribution under subsection (1) of this section shall be measured as of:
  - (a) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
  - (b) The date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.
- (4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section shall be at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- (5) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, then indebtedness of a limited liability company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under subsection (1) of this section.
- (6) If the indebtedness is issued as a distribution, then each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.
- (7) For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefit program.

**Effective:** July 15, 2010

**History:** Repealed and reenacted 2010 Ky. Acts ch. 51, sec. 115, effective July 15, 2010; and amended ch. 133, sec. 34, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 137, sec. 115, effective June 26, 2007. -- Created 1994 Ky. Acts ch. 389,

sec. 45, effective July 15, 1994.

**Legislative Research Commission Note (7/15/2010).** 2010 Ky. Acts ch. 51, sec. 183, provides, "The specific textual provisions of Sections 1 to 178 of this Act which reflect amendments made to those sections by 2007 Ky. Acts ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section."

**Legislative Research Commission Note (7/15/2010).** This section was amended by 2010 Ky. Acts ch. 133, and repealed and reenacted by 2010 Ky. Acts ch. 51. Pursuant to Section 184 of Acts ch. 51, it was the intent of the General Assembly that the repeal and reenactment not serve to void the amendment, and these Acts do not appear to be in conflict; therefore, they have been codified together.